



# Off payroll arrangements – policies, procedures and disclosures

## Survey report May 2015

### Introduction

#### Background

Since 2012/13, NHS bodies have been required<sup>1</sup> to include information about off payroll arrangements in their remuneration report. This year, for the first time, NHS foundation trusts have to make a disclosure<sup>2</sup> about their policy on using off payroll arrangements.

These reporting requirements were put into place following the HM Treasury *Review of the tax arrangements of public sector appointees*<sup>3</sup> which was published in May 2012. Further guidance on the arrangements which public sector bodies<sup>4</sup> and NHS bodies<sup>5</sup>, in particular, should put in place was issued later that year.

There is no clear definition of off payroll individuals. Off payroll was defined by HM Treasury in 2012 as payments in relation to individuals who are engaged to provide services but who do not have pay as you earn (PAYE) and national insurance (NI) contributions deducted at source. However, arrangements for GPs which the HMRC has deemed to be office holders do not fit into this definition. They are paid through a CCG's payroll for PAYE and NI purposes but their pension is paid through the SOLO route. However, they are classified as off payroll even though they are paid through the payroll<sup>6</sup>.

#### Discussions at the pre accounts planning conferences

The new reporting requirement for NHS foundation trusts resulted in discussions at the HFMA's pre accounts planning conferences (January 2015) about whether NHS bodies have an off payroll policy as well as wider discussions around the difficulties NHS bodies encounter when collecting information on off payroll arrangements for inclusion in their remuneration report.

Therefore, during March 2015, the HFMA conducted a survey of those NHS bodies which attended the pre accounts planning conferences to assess whether a widespread issue exists and to gather good practice guidance to be shared between NHS bodies.

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<sup>1</sup> The requirement is set out in paragraph 7.48 and annex 8 to chapter 7 of Monitor's NHS foundation trust annual reporting manual (the ARM) 2014/15 [www.gov.uk/government/publications/nhs-foundation-trusts-annual-reporting-manual-201415-and-paragraphs-2.45-to-2.47-and-annex-3-to-chapter-2-of-the-department-of-health-group-manual-for-accounts-\(the-mfa\)-201415](http://www.gov.uk/government/publications/nhs-foundation-trusts-annual-reporting-manual-201415-and-paragraphs-2.45-to-2.47-and-annex-3-to-chapter-2-of-the-department-of-health-group-manual-for-accounts-(the-mfa)-201415) and [www.info.doh.gov.uk/doh/finman.nsf/4db79df91d978b6c00256728004f9d6b/75334ce516e12ab280257d9d004144b3?OpenDocument](http://www.info.doh.gov.uk/doh/finman.nsf/4db79df91d978b6c00256728004f9d6b/75334ce516e12ab280257d9d004144b3?OpenDocument)

<sup>2</sup> This requirement is set out in paragraph 7.48 of the ARM

<sup>3</sup> [www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/220745/tax\\_pay\\_appointees\\_review\\_230512.pdf](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/220745/tax_pay_appointees_review_230512.pdf)

<sup>4</sup> [www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/62099/PPN-0712-Tax-Arrangements-of-Public-Appointees.pdf](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/62099/PPN-0712-Tax-Arrangements-of-Public-Appointees.pdf)

<sup>5</sup> [www.hsj.co.uk/Journals/2012/08/22/i/i/Nicholson-letter.pdf](http://www.hsj.co.uk/Journals/2012/08/22/i/i/Nicholson-letter.pdf)

<sup>6</sup> See FAQ 2 to the 2014/15 Manual for Accounts

[www.info.doh.gov.uk/doh/finman.nsf/4db79df91d978b6c00256728004f9d6b/75334ce516e12ab280257d9d004144b3/\\$FILE/2014-15%20Manual%20FAQ2%20CCG%20GP%20Pensions%20disclosures.pdf](http://www.info.doh.gov.uk/doh/finman.nsf/4db79df91d978b6c00256728004f9d6b/75334ce516e12ab280257d9d004144b3/$FILE/2014-15%20Manual%20FAQ2%20CCG%20GP%20Pensions%20disclosures.pdf)

## Overview

The survey has raised two different issues that the HFMA will follow up:

- Practical arrangements for collecting and validating the information necessary to meet HM Treasury's reporting and assurance requirements
- The consequences of failing to correctly identify whether an individual is an employee in terms of HMRC's employment tests.

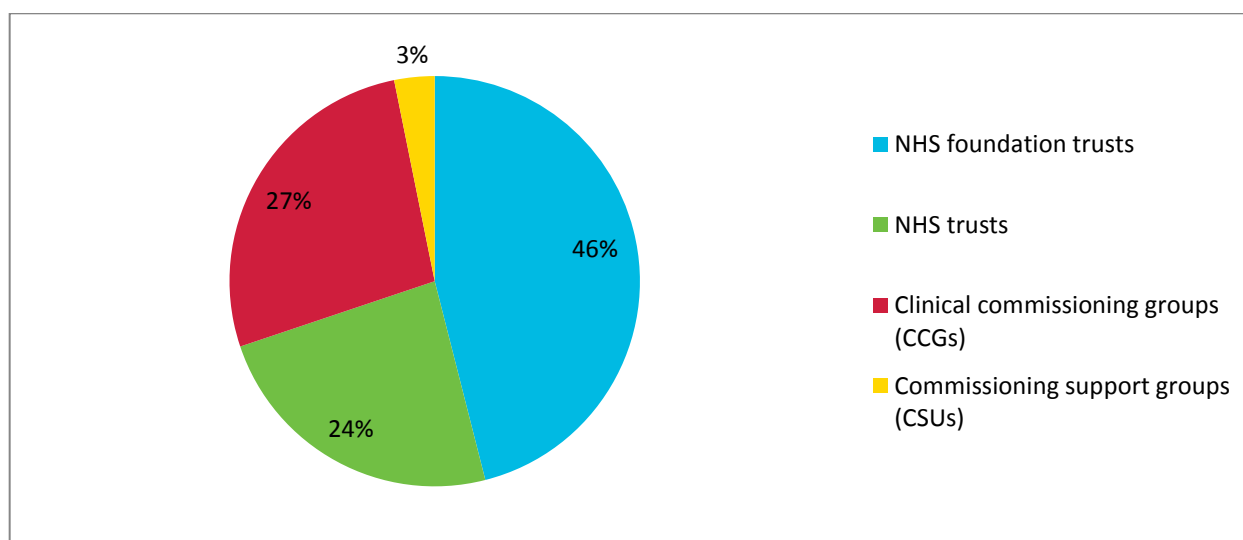
The survey revealed the following key points:

- Just under half of the respondents indicated that they had a policy on the use of off payroll arrangements in place and a few more are considering putting such a policy in place
- Only one body imposed a blanket ban on the use of off payroll arrangements
- The content of those policies varies from body to body and, in some cases, the policy is more like a set of detailed procedures to follow
- Just over half of the respondents indicates that they have detailed procedures in place
- Half of respondents did not check the employment status of individuals on off payroll arrangements. However, this was the reason that fines were incurred by five of the six bodies visited by HMRC
- The most common ways of getting assurance over off payroll arrangements is to include clauses in contracts and to get written assurance from the individual concerned. However, this practice is not widespread
- Responsibility for the preparation of the disclosures in the annual report usually falls to the finance team. The majority of respondents find the disclosures very or fairly difficult to compile
- Where guidance is sought then the ARM or the MfA are used as the primary source. However, over 95% of respondents would welcome more guidance.

## Survey results

### Respondents

In total, 62 NHS bodies took part although not every NHS body answered every question.



### Current policy on the use of off payroll arrangements

Respondents were asked whether their organisation has a policy in place on the use of off payroll arrangements. The results were as follows:

	Yes	No	Don't know
<b>NHS foundation trusts</b>	15	13	1
<b>NHS trusts</b>	3	9	3
<b>Clinical commissioning groups (CCGs)</b>	8	6	2
<b>Commissioning support groups (CSUs)</b>	1	1	
	27	29	6

Seventeen of the bodies which indicated that they did not currently have a policy on the use of off payroll arrangements said that they are either considering whether such a policy should be introduced or are now in the process of preparing one.

Of the fifteen NHS foundation trusts who said yes, eleven indicated that the policy had been put in place specifically to meet Monitor's new reporting requirement.

We asked those bodies who have a policy in place what their policy covers:

	No.	Percentage
<b>Only those individuals paid £220 or more per day</b>	13	42%
<b>Only those individuals who are included in the remuneration report</b>	1	3%
<b>All individuals paid outside of the payroll except where they are paid through an agency</b>	12	39%
<b>All individuals whether they are paid through an agency or not</b>	9	29%
<b>Only contracts expected to last over six months</b>	7	23%
<b>Our policy is not to use off payroll arrangements</b>	1	3%
<b>Other</b>	2	6%
<ul style="list-style-type: none"> <li><b>Agency contracts for more than £220 AND over 6 months</b></li> </ul>		

Comments included:

*'We have a very detailed ' Procedure' rather than a 'policy'.'*

*'We have moved all of our off payroll engagements to be paid via payroll, except where they are short term task and finish pieces of work. We pay these to their practices, however some individuals who work part time in practices do want to be paid direct, but we avoid this where possible. Consideration also needs to be given to whether it is pensionable.'*

*'There is no strict policy about engaging people off payroll other than the normal policies on employment status, office holders and value for money. However, we accept that the ARM this year requires a specific statement on >£220 for >6 months.'*

*'The policy covers conditions of use of all temporary staff and the approval process. It does not explicitly mention the source of the temporary staff member and/or whether these are high cost.'*

*'Our policy covers all individuals who are paid outside of payroll, it still captures those who are paid under £220'*

*'Our policy details the mechanics of identifying the status of a worker, however we are reviewing to include more guidance as to when, why and how we engage off payroll workers.'*

*'The policy covers the process to follow in deciding how to fill a service gap. First formal recruitment should be considered. Only if not suitable should Agency then be considered in liaison with our Procurement team. Only if those methods are not appropriate should off-payroll arrangements be considered, following usual procurement rules and with the addition of a form that is required from all contractors employed via that route to provide our assurance.'*

*'Off-payroll or non-standard contract employment arrangements should only be considered by exception and where there is no practical alternative to the Trust employing directly. Before any off-payroll engagements are agreed with an individual a tax status questionnaire must be completed and sent to the Director of People before any engagement is finalised.'*

## Procedures when entering into off payroll arrangements

Respondents were asked whether they have detailed procedures which have to be followed when entering into off payroll arrangements:

	Yes	No	Don't know
<b>NHS foundation trusts</b>	14	13	2
<b>NHS trusts</b>	10	1	4
<b>Clinical commissioning groups (CCGs)</b>	6	8	2
<b>Commissioning support groups (CSUs)</b>	1	1	
	31	23	8

There did not seem to be a correlation between whether NHS bodies have a policy in place and whether they also have detailed procedures in place:

	Policy in place	No policy in place	Don't know
Procedures in place	4 CCGs 8 FTs 2 Trusts	1 CCG 1 CSU 6 FTs 7 Trusts	
No procedures in place	1 CSU 4 CCGs 7 FTs 1 Trust	4 CCGs 6 FTs	
Don't know	1 CCG	1 FT 2 Trusts	1 CCG 1 FT 2 Trusts

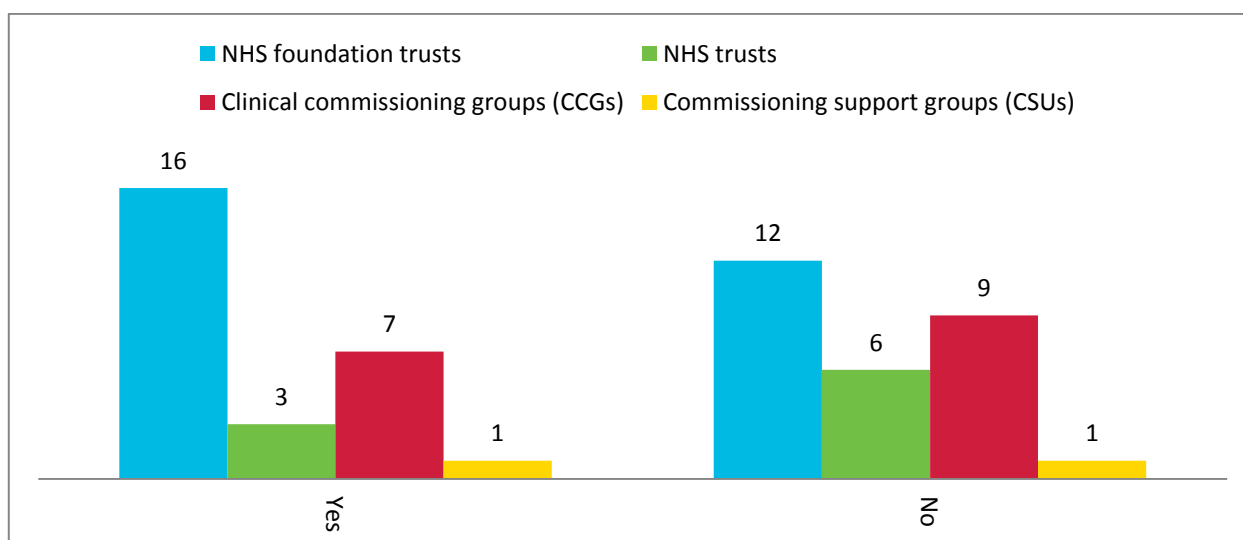
The rest of this section of the questionnaire was based on the process which should be followed when entering into off payroll arrangements as set out in David Nicolson's letter dated 20 August 2012<sup>7</sup>.

## Employment status

We asked whether respondents used the Her Majesty's Revenue and Custom's (HMRC) employment status indicator tool<sup>8</sup> to ensure that an individual is appropriately recognised as an employee or not. Only half of the respondents said that they undertook this check:

<sup>7</sup> [www.hsj.co.uk/Journals/2012/08/22/i/i/u/Nicholson-letter.pdf](http://www.hsj.co.uk/Journals/2012/08/22/i/i/u/Nicholson-letter.pdf)

<sup>8</sup> [www.gov.uk/employment-status-indicator](http://www.gov.uk/employment-status-indicator)



We then asked, if that check was undertaken, which department takes responsibility. In 8 cases the answer was finance, in 2 cases it was human resources and in 6 cases it was the employing manager. There was a level of uncertainty whether these checks were being undertaken in all cases:

*'We have a policy/procedure which states that the person initiating the engagement works with HR to use the tool but I'm not certain that this happens in practice.'*

### Visits by HMRC

We asked whether any NHS bodies had been visited by HMRC, since these reporting requirements were introduced in 2012/13, specifically to look at off payroll arrangements. Five bodies had been visited and in four cases the arrangements that the NHS body had in place were deemed to be unsatisfactory and the body had been fined as a consequence. In all five cases, the reason for the penalty was that individuals paid on an off payroll basis were determined by HMRC to be employees. It is worth noting that the HMRC do not have a threshold in terms of amount paid per day or length of service when considering whether an individual is an employee or not.

### Assurance over off payroll arrangements

Where an individual is paid off payroll at a rate of more than £220 per day and for more than six months the guidance indicates that assurance should be sought that the individual is meeting their income tax and National Insurance obligations.

We asked what assurances NHS bodies sought over off payroll individuals' tax affairs:

	Those who have detailed procedures in place	Those who do not have detailed procedures in place	Those who do not know whether they have detailed procedures in place	Total
<b>We include clauses in their contract about the payment of tax</b>	21	10	1	32
<b>We ask them to confirm verbally that they are making their own appropriate tax arrangements</b>	2	3		5
<b>We ask them to confirm in writing that they are making their own appropriate tax arrangements</b>	18	13		31
<b>We ask to see their company accounts and filed tax return as evidence that they are registered to pay tax</b>	7	2		9

	Those who have detailed procedures in place	Those who do not have detailed procedures in place	Those who do not know whether they have detailed procedures in place	Total
<b>We ask to see form SA250 as evidence that they are registered as self-employed with HMRC</b>	4	5		9
<b>We ask to see pay slips where the individual is employed by a company or other body (e.g. a University)</b>	6	1		7
<b>We review their IR35 arrangements</b>	8	3		11
<b>Other</b>	5	2	1	8

Comments included:

*'Initially the trust requests an IR35 assessment and supporting evidence thereafter subject to their circumstances.'*

*'We also sample check, as per DH guidance, and request evidence of IR35 status.'*

*'We have found that no-one seems to recognise the SA250 reference. People are very reluctant to share sets of accounts as they may draw income from other sources. Agencies are often not very helpful'*

*'Depends whether they're employed through an agency, as an individual or through a company. We ask to see either a pay slip or some sort of evidence that they're doing their tax returns.'*

*'Not being tax specialists it is difficult for HR or finance staff to assess whether the right amount of taxation has been paid particularly if this in respect of a company or self-employed - we are not tax experts.'*

*'This is hard to enforce as contracts are often retrospective.'*

In terms of evidence of these checks, the responses were varied:

	Response to the question as to whether they have detailed procedures in place			Total
	Yes	No	Don't know	
<b>A signed declaration</b>	15	5		20
<b>Copies of all documentation</b>	17	12		29
<b>None</b>	1	4		5
<b>Other</b>	3	4		7

*'Whatever we get, but mostly email confirmations from accountants'*

*'Electronic documentation, e.g. PDF, scanned images'*

*'If the individual is through an agency then there may well be documentation held between the individual and the agency.'*

## **Disclosure of off payroll arrangements in the annual report**

Anecdotal evidence at events such as the HFMA pre accounts planning conferences and committee meetings is that the disclosures in the remuneration report around off payroll arrangements are difficult to collate.

We asked which department in the NHS body is responsible for the data collection for this specific disclosure:

	Overall responsibility	Provides support	Provides a cross check/validation
<b>Finance</b>	50	5	3
<b>HR/personnel</b>	5	32	3
<b>Purchasing/procurement</b>		16	1
<b>Board secretary</b>	3	6	2
<b>Other</b>		2	1
<ul style="list-style-type: none"> <li>• <b>Communications director</b></li> <li>• <b>Corporate governance officer</b></li> </ul>			

Comments included:

*'Finance has to retrospectively check what terms have been agreed regarding tax and NI. HR does not currently include this as part of the process.'*

*'Finance led at present, but is supposed to be joint HR/finance responsibility.'*

*'This work is only undertaken by finance. Procurement were initially involved in agreeing the new format contract.'*

Generally, this disclosure is seen as difficult to complete. Seventy percent of respondents said that it was very or fairly difficult to collect the information necessary for this disclosure.

*'Agency arrangements can drift over the six months which needs monitoring and retrospective claims. The guidance isn't straightforward and neither are the contracts. Not really sure what checks we are supposed to do'*

*'Internally, we have struggled to get engagement at Executive level.'*

*'The real difficulty is stopping managers from entering into off payroll engagements in the first place, and in identifying them once they have been entered into.'*

*'The guidance is confusing as what we think it intends to pick up is not what we seem to be collating, e.g. doctors and nurses paid above £220  
Completeness is an issue  
It is a very labour intensive exercise'*

*'However, identification of the individuals tends to happen at the invoicing stage, by which time it is often difficult to introduce the required clauses.'*

*'No clear documentation maintained to identify the individuals requiring assurance. Individuals for whom assurance is requested provide this at varying degrees of efficiency.'*

*'The problem is identifying who is off payroll and what should be classed as off payroll. The costs are picked up through a download of consultancy costs and working through the detail in there'*

*'Very time consuming as several departments are involved and coordination is difficult. Also understanding the requirements to identify relevant off payroll engagements.'*

Although some respondents have got arrangements in place:

*'Relatively easy to collect some information, ensuring accuracy/completeness is the issue'*

*'Straightforward once the procedures put into place'*

*'Initially very difficult. But we now have systems in place to identify these types of arrangements within our Accounts Payable system.'*

In terms of guidance, a variety of sources are used by respondents:

	No.
<b>The ARM or manual for accounts</b>	52
<b>Treasury's PES paper</b>	17
<b>HMRC material</b>	30
<b>Direct contact with Monitor/NHS England/NHS Trust Development Authority (NHS TDA)</b>	7
<b>Direct contact with HMRC</b>	2
<b>Other:</b>	8
<ul style="list-style-type: none"> <li>• <b>Monitor accounts team</b></li> <li>• <b>HFMA</b></li> <li>• <b>Tax department of auditors</b></li> <li>• <b>Direct contact with HM Treasury (but they were unable to assist)</b></li> <li>• <b>The original DH guidance letter and direct queries to the DH</b></li> <li>• <b>Other local trusts</b></li> <li>• <b>Monitor's Off Payroll arrangements at FTs guidance, and the HMT original Review of Tax arrangements of public sector employees</b></li> <li>• <b>Professional advisors and trawling websites</b></li> </ul>	

Almost 95% of respondents would like additional guidance to be available in this area. However, there was a mixture of answers as to who this guidance should be prepared by. Just under half (45%) said that Monitor, the NHS TDA and/or NHS England should prepare the guidance, just over 30% wanted the HFMA to prepare it and 20% wanted more guidance from the HMRC.